

REMARKS

Claims 1-9 were pending.

Claims 4-6 and 8-9 were withdrawn due to a restriction requirement.

Claim 3 is currently amended to an independent claim. Claims 1 and 2 are currently amended to depend from claim 3.

Claims 4 and 9 are currently amended to correct dependency.

Claim 7 was cancelled, previously.

No new matter is added.

Product claims 1-3 and process claims 4-6 and 8-9 are presented for reconsideration and rejoinder.

**Restriction Requirement/Rejoinder**

Claims 1-9 are subject to restriction as set forth in a previous Office Action. Responsive thereto, the election of Group I, corresponding to claims 1-3 and 7, was affirmed.

In the previous Office Action, the Examiner made the restriction requirement final.

Claim 7 was cancelled.

The Applicants request that if the product claims 1-3 are found allowable then the process claims for making the crystalline polymorph Form G of ( $\pm$ )-7-(3-(4-fluorophenyl)-1-(1-methylethyl)-1H-indol-2-yl)-3,5-dihydroxy-6-heptenoic acid monosodium salt, claims 4-6 and 8-9, be rejoined with said product claims. The withdrawn process claims 4-6 and 8-9 depend from claims 1-3 and include all the limitations of the product claims.

Accordingly, the Applicants request that Group I, claims 1-3, and Group II, claims 4-6 and 8-9, be rejoined.

### **Claim Rejection – 35 USC 112 Second Paragraph**

Claims 1-3 and 7 were rejected under 35 USC 112 second paragraph as being indefinite for failing to particularly point and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-3 and 7 do not contain sufficient physical data that particularly points out and distinctly claims the product that Applicant regards as the invention.

Claims 1-3 were amended to properly identify the crystalline polymorph Form G of ( $\pm$ )-7-(3-(4-fluorophenyl)-1-(1-methylethyl)-1H-indol-2-yl)-3,5-dihydroxy-6-heptenoic acid monosodium salt which is the only crystalline polymorph claimed.

Claim 7 was cancelled.

After discussing this with the Examiner on 03/12/2008 and according to the Advisory Action, claim 3 is currently amended to an independent claim. Claims 1 and 2 are currently amended to depend from claim 3.

The Applicants therefore aver that the 35 USC 112 second paragraph rejection is addressed and overcome.

### **Claim Rejection – 35 USC 112 First Paragraph**

Claim 7 remained rejected under 35 USC 112 first paragraph as failing to comply with the enablement requirement. The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains or with which it is most nearly connected, to make and/or use the invention.

Claim 7 was cancelled.

According to the Advisory Action, this rejection is withdrawn.

### **Claim Rejections – 35 USC 102(b)**

Claims 7 was rejected under 35 USC 102(b) as being anticipated by Van der Scaaf et al. in WO 2002/36563 (US 6,858,643) and Van der Shaaf et al. in US 2003/0032666 (US 6,696,479).

Claim 7 was cancelled.

According to the Advisory Action, this rejection is withdrawn.

### **Claim Rejections – Double Patenting**

Claim 7 was rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 7 and 20 of US 6,858,643.

Claim 7 was rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 11 and 12 of US 6,696,479.

Claim 7 was cancelled.

Accordingly, this rejection is withdrawn.

### **Allowable Claims**

According to the Advisory Action, claim 3 is allowable.

Claims 1 and 2 would be allowable if these claims depended from claim 3.

The Examiner is kindly requested to reconsider and to withdraw the present rejections and objections.

Applicants submit that the present claims are in condition for allowance and respectfully request that they be found allowable.

Respectfully submitted,



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Enclosure: Two month extension of time